

Case Nos. 22-1019 & No. 22-1020 (consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

EAGLE COUNTY, COLORADO,
Petitioner,
CENTER FOR BIOLOGICAL DIVERSITY ET AL.,
Petitioners,
v.

SURFACE TRANSPORTATION BOARD ET AL,
Respondents,

SEVEN COUNTY INFRASTRUCTURE COALITION
AND UINTA BASIN RAILWAY, LLC,
Respondent-Intervenors.

SUPPLEMENTAL JOINT APPENDIX
JA1848—JA1849

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EI-31194

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**Ute Indian Tribe of the Uintah and Ouray Reservation
Comments to the Surface Transportation Board's Draft Environmental Impact Statement
for the Uintah Basin Railway Project, STB Finance Docket No. FD 36284**

January 28, 2021

The Ute Indian Tribe of the Uintah and Ouray Reservation ("Ute Indian Tribe" or "Tribe") respectfully submits the following comments in response to the Surface Transportation Board's ("STB")¹ Draft Environmental Impact Statement ("DEIS") for the Uintah Basin Railway Project, STB Finance Docket No. FD 36284.

INTRODUCTION

The Ute Indian Tribe is located on the Uintah and Ouray Reservation ("Reservation") in northeastern Utah, approximately 150 miles east of Salt Lake City. The Reservation lies within the drainage of the Upper Colorado River Basin. The Ute Indian Tribe consists of three bands: Uintah, White River and Uncompahgre. They once lived in an area from the Wasatch Front all the way to the Colorado Front Range – from present-day Salt Lake City, Utah to Denver, Colorado.

The Uintah and Ouray Reservation was originally two separate reservations. The first, the Uintah Valley Reservation, was established by Executive Order on October 3, 1861, confirmed by Congress in the Act of May 5, 1864, § 2, 13 Stat. 63, and encompasses 2,039,040 acres in the Uinta Basin of Utah. The second reservation, known as the Uncompahgre Reservation, was established pursuant to the Act of June 15, 1880 (ch. 223, 21 Stat. 1999), and the Executive Order of January 5, 1882, and it encompasses approximately 2,000,000 acres. Both Reservations were established to provide a permanent homeland for the Ute Indians and to enable the Tribe and its members to become self-sustaining through agricultural and other economic pursuits. Together, the Uintah Valley Reservation and Uncompahgre Reservation are organized under the Indian Reorganization Act to form a single reservation known today as the Uintah and Ouray Reservation. By area, the

¹ As used in these comments, "STB" is inclusive of the STB's Office of Environmental Analysis, referred to in the DEIS under the acronym "OEA."

Uintah and Ouray Reservation is the second largest Indian reservation in the United States, and most of the Tribe's nearly 3,000 members reside within Reservation boundaries.

The Tribe relies heavily on revenue from oil and gas development on its Reservation. The Tribe's substantial mineral estate is managed by its Energy and Minerals Department, which is responsible for tracking and maintaining data on tribal mineral assets, monitoring energy and mineral production on the Reservation, and collecting and forecasting royalties and severance taxes. The Tribe has developed strong and longstanding working relationships with industry partners in oil and gas development. Yet, the opportunity for sustainable tribal economic growth from its mineral estate cannot be fully realized due to limited access to refineries capable of processing black wax and yellow wax crude. The relative remoteness of the Uintah and Ouray Reservation, combined with limited means of transportation, have forced the Tribe to rely on refineries in Salt Lake City with limited capacity to process crude oil.

The Uintah Basin Railway Project (sometimes referred to herein as simply "the Project"), presents a critical opportunity to expand Tribal access to the oil and gas market by connecting the Uinta Basin to the National Rail Network. By establishing a consistent and reliable means of transporting tribal minerals to refineries in other regions, the Project could significantly enhance on-Reservation energy development relied upon by the Tribe and its members. While the Tribe supports this Project, it is important to ensure the STB, as well as other agencies and stakeholders, properly recognize the sovereignty and jurisdiction of the Tribe over the certain lands and resources impacted by the Project and account for the appropriate role of the Tribe in establishing and implementing the mitigation measures identified in the DEIS.

TRIBAL JURISDICTION LANDS WITHIN EACH ALTERNATIVE

At various points throughout the DEIS, STB states that the Wells Draw Alternative does not include lands within the jurisdiction of the Tribe. This is not an accurate characterization. While the preferred Whitmore Park Alternative and the Indian Canyon Alternative both affect a greater amount of Tribal lands than the Wells Draw Alternative, the Wells Draw Alternative still contains lands within Indian country – and thus within the civil regulatory jurisdiction of the Ute Indian Tribe – in both the Uintah Valley and Uncompahgre portions of the Uintah and Ouray Reservation.

Tribal jurisdiction over lands within the borders of the Uintah and Ouray Reservation was fully, fairly, and conclusively adjudicated by the United States Court of Appeals for the Tenth Circuit in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 773 F.2d 1087 (10th Cir. 1985) (en banc) (*Ute III*); modified and reaffirmed, *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 114 F.3d 1513 (10th Cir. 1997) (*Ute V*); *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 790 F.3d 1000 (10th Cir. 2015) (*Ute VI*) (reaffirmed); and *Ute Indian Tribe of the Uintah and Ouray Reservation v. Myton*, 835 F.3d 1255 (10th Cir. 2016) (*Ute VII*) (reaffirmed).

In *Ute V*, the Tenth Circuit drew a bright-line demarcation for the boundary between state and tribal jurisdictional authority over lands within the Uintah and Ouray Reservation: